

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellants: **Ronald Lynn Blair et al.**
Serial No.: **10/561,024**
Filed: **December 16, 2005**
Title: **PARENTAL MONITORING OF DIGITAL CONTENT**
Examiner: **Alan H. Luong**
Art Unit: **2427**
Customer No.: **24498**

APPEAL BRIEF

**Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450**

Sir:

In response to the non-final Office Action dated April 19, 2010, and further to the Notice of Appeal filed on July 19, 2010, Appellants hereby submit an Appeal Brief in accordance with 37 C.F.R. §41.37 for the above-referenced application. The fee for this Appeal Brief was already paid in connection with the Appeal Brief filed on January 18, 2010. The Examiner has reopened up prosecution with the non-Final Office Action from April 19, 2010.

Please charge any fees owed in connection with this Brief to Deposit Account 07-0832.

I. Real Party in Interest

The real party in interest is THOMSON Licensing S.A., 46 Quai A. Le Gallo, F-92100 Boulogne-Billancourt, France.

II. Related Appeals and Interferences

There are no prior or pending appeals, interferences, or judicial proceedings known to Appellants, the Appellants' legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. Status of Claims

Claims 1-2, 5-13 and 16-19 are pending in this application, and are rejected. Claims 3-4 and 14-15 are cancelled. The rejection of claims 1-2, 5-13 and 16-19 is being appealed.

IV. Status of Amendments

No amendment subsequent to the final rejection of December 15, 2008, or the non-final rejections of May 18, 2009 and April 19, 2010 has been filed.

V. Summary of Claimed Subject Matter

Independent claim 1 defines a method for issuing a parental monitoring query command for determining a media object being rendered on a remote device (see, for example, flowchart of FIG. 6), comprising the steps of:

transmitting, from a monitoring device, a query requesting identification information for a media object being multicasted through a multicast group to a remote device from a host device (see, for example, page 13, lines 4-8 and step 615 of FIG. 6);

receiving multicast information in response to the query, wherein the multicast information indicates a multicast address and port which is used to multicast the media object through the multicast group to the remote device from the host device (see, for example, page 13, lines 21-23 and step 660 of FIG. 6);

joining the multicast group with the received multicast information to receive the media object (see, for example, page 14, lines 3-5 and 11-12 and steps 677 and 686 of

FIG. 6);

resolving the multicast address and port information to identify attributes of the media object (see, for example, page 14, lines 1-3 and 5-9 and steps 675 and 680 of FIG. 6); and

providing, from the monitoring device, a leave command to the host device to remove the remote device from the multicast group if the media object is objectionable so that receipt of the media object by the remote device is disabled in real-time (see, for example, page 14, lines 13-19 and steps 679 and 689 of FIG. 6).

Dependent claim 6 further defines claim 1 and states that the monitoring device uses a channel list that maps the multicast address and port to a channel (see, for example, page 7, lines 14-20).

Dependent claim 7 further defines claim 6 and states that a program guide is used to select media objects transmitted via a multicast media object corresponding to the channel (see, for example, page 8, line 30 to page 9, line 2).

Dependent claim 8 further defines claim 1 and states that the media object is transmitted as part of an Internet Group Management compatible protocol multicasting service (see, for example, page 4, lines 19-24) and program identification information is available for the media object as part of a Session Description compatible protocol (see, for example, page 7, lines 5-14).

Independent claim 12 defines an apparatus for issuing a parental monitoring query command for determining a media object being rendered on a remote device, comprising:

a network interface (see, for example, element 79 of FIG. 1 and page 5, lines 19-23) that issues a query requesting identification information for a media object being multicasted through a multicast group to a remote device from a host device (see, for example, page 13, lines 4-8 and step 615 of FIG. 6), joins the multicast group with multicast information received in response to the query to receive the media object (see, for example, page 14, lines 3-5 and 11-12 and steps 677 and 686 of FIG. 6), and

provides a leave command to the host device to remove the remote device from the multicast group if the media object is objectionable so that receipt of the media object by the remote device is disabled in real-time (see, for example, page 14, lines 13-19 and steps 679 and 689 of FIG. 6);

a transport decoder (see, for example, element 13 of FIG. 1 and page 5, lines 23-26) that processes the multicast information in response to the query, wherein the multicast information indicates a multicast address and port which is used to multicast the media object through the multicast group to the remote device from the host device (see, for example, page 13, lines 21-23 and step 660 of FIG. 6); and

a data transport decoder (see, for example, element 22 of FIG. 1) that resolves the multicast address and port information to identify attributes of the media object (see, for example, page 14, lines 1-3 and 5-9 and steps 675 and 680 of FIG. 6).

Dependent claim 16 further defines claim 13 and states that the apparatus uses a channel list that maps the multicast address and port to a channel (see, for example, page 7, lines 14-20).

Dependent claim 17 further defines claim 16 and states that a program guide is used to select media objects transmitted via a multicast media object corresponding to the channel (see, for example, page 8, line 30 to page 9, line 2).

Dependent claim 18 further defines claim 12 and states that the media object is transmitted as part of an Internet Group Management compatible protocol multicasting service (see, for example, page 4, lines 19-24) and program identification information is available for the media object as part of a Session Description compatible protocol (see, for example, page 7, lines 5-14).

VI. Grounds of Rejection to be Reviewed on Appeal

The following grounds of rejection are presented for review in this appeal:

A. The rejection of claims 1-2, 5, 9-13 and 19 under 35 U.S.C. §103(a) based on the proposed combination of U.S. Patent Publication No. 2005/0028208 by Ellis et al.

(hereinafter, "Ellis") and European Patent Application No. 1119120 by Bosloy et al. (hereinafter, "Bosloy");

B. The rejection of claims 6-7 and 16-17 under 35 U.S.C. §103(a) based on the proposed combination of Ellis, Bosloy and U.S. Patent No. 6,774,926 issued to Ellis et al. (hereinafter, "Ellis '926"); and

C. The rejection of claims 8 and 18 under 35 U.S.C. §103(a) based on the proposed combination of Ellis, Bosloy and "Request for Comments 3266; Updates 2327, Network Working Group, June 2002 by Olsen et al. (hereinafter, "Olsen").

VII. Argument

A. Patentability of Claims 1-2, 5, 9-13 and 19

The rejection of claims 1-2, 5, 9-13 and 19 under 35 U.S.C. §103(a) based on the proposed combination of Ellis and Bosloy should be reversed for at least the following reasons.

Claim 1

Independent claim 1 recites:

"A method for issuing a parental monitoring query command for determining a media object being rendered on a remote device, comprising the steps of:

transmitting, from a monitoring device, a query requesting identification information for a media object being multicasted through a multicast group to a remote device from a host device;

receiving multicast information in response to said query, wherein said multicast information indicates a multicast address and port which is used to multicast said media object through the multicast group to the remote device from the host device;

joining the multicast group with said received multicast information to receive said media object;

resolving said multicast address and port information to identify attributes of said media object; and

providing, from the monitoring device, a leave command to the host device to remove said remote device from said multicast group if said media object is objectionable so that receipt of said media object by said remote device is disabled in real-time."

As indicated above, independent claim 1 recites a method for issuing a parental monitoring query command for determining a media object being rendered on a remote device. One of the notable features of the claimed invention is the ability of a parent at a "monitoring device" to determine which "media object" (e.g., television program) is currently being provided by a "host device" for viewing by a child at a "remote device". Based on this determination, the parent at the monitoring device may then disable reception of the media object by the remote device in real-time, if the media object is deemed objectionable. To this end, the monitoring device first transmits a query requesting identification information for the media object being multicasted through a multicast group to the remote device from the host device. In response to the query, the monitoring device receives multicast information indicating a multicast address and port which is used to multicast the media object through the multicast group to the remote device from the host device. The monitoring device joins the multicast group with the received multicast information to receive the media object (i.e., the same media object being viewed by the child at the remote device). The monitoring device also resolves the multicast address and port information to identify attributes of the media object. Finally, the monitoring device provides a leave command to the host device to remove the remote device from the multicast group if the media object is objectionable so that receipt of the media object by the remote device is disabled in real-time.

Neither Ellis nor Bosloy, whether taken individually or in combination, discloses or suggests, *inter alia*, the aforementioned claimed feature that enables a parent at a "monitoring device" to determine which "media object" (e.g., television program) is currently being provided by a "host device" for viewing by a child at a "remote device".

The primary reference, Ellis, discloses an interactive television program guide having remote access capabilities. The teachings of Ellis may be characterized by the Abstract, which states:

"An interactive television program guide with remote access is provided.
The interactive television program guide is implemented on interactive television program guide equipment. A remote program guide access device is connected to the interactive television program guide equipment

by a remote access link to provide a user with remote access to program guide functions. An interactive television program guide system based on multiple user television equipment devices in a single household is provided. The system provides a user with an opportunity to adjust program guide settings with a given one of the interactive television program guides. Program guide setting include features related to setting program reminders, profiles, program recording features, messaging features, favorites features, parental control features, program guide set up features (e.g., audio and video and language settings), etc." (emphasis added)

As indicated above, Ellis provides an interactive television program guide having remote access capabilities, wherein a user may remotely adjust program guide settings, including parental control features. As is known in the art, such parental control features may be used to block the reception of certain programs. However, Ellis nowhere discloses or suggests, *inter alia*, the aforementioned claimed feature that enables a parent at a "monitoring device" to determine which "media object" (e.g., television program) is currently being provided by a "host device" for viewing by a child at a "remote device". That is, while Ellis allows a user to remotely adjust parental control settings of a program guide which may be used to block the reception of certain programs, there is absolutely no disclosure or suggest of the user being able to determine what program (e.g., "media object") is currently being viewed by a remote device, as claimed. Accordingly, Ellis fails to disclose or suggest at least one notable feature of the claimed invention.

The secondary reference, Bosloy, is unable to remedy the aforementioned deficiencies of Ellis. In particular, Bosloy discloses a method and apparatus for distributing multimedia data that employs "intelligent edge blocks" for providing digital multimedia services in a manner that "reduces latency and allows for expandability in terms of the number of subscribers, or users, which may be supported" (see, for example, the Abstract and paragraphs [0001]-[0008]). However, like Ellis, Bosloy fails to disclose or suggest, *inter alia*, the aforementioned claimed feature that enables a parent at a "monitoring device" to determine which "media object" (e.g., television program) is currently being provided by a "host device" for viewing by a child at a "remote device". Accordingly, even if the teachings of Ellis and Bosloy are combined,

as proposed, the resulting combination still does not disclose or suggest each and every feature of the claimed invention. For this reason alone, Appellants submit that the instant rejection should be reversed.

Moreover, even assuming, *arguendo*, that Ellis and Bosloy did disclose each and every feature of the claimed invention (which they do not), the Examiner's proposed modification to Ellis using the teachings of Bosloy would in no way be desirable to one of ordinary skill in the art. Here, Appellants note that the mere fact that a prior art device could (in hindsight) be modified to produce a claimed invention is not a basis for an obviousness rejection unless the prior art suggests the desirability of such a modification. See, for example, *In re Laskowski*, 871 F.2d 115, 10 USPQ2d 1397 (Fed. Cir. 1989) ("Although the Commissioner suggests that [the structure in the primary prior art reference] could readily be modified to form the [claimed] structure, '[t]he mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.'") and *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

On this point, Appellants note that the Examiner proposes modifying Ellis to include the feature of "providing a leave command", as taught by Bosloy (see pages 5-6 of the non-final Office Action dated April 19, 2010). However, Appellants submit that such a modification to Ellis would in no way be desirable to one of ordinary skill in the art since it would change the principle operation of Ellis. In particular, Ellis teaches that "[t]he remote access program guide, for example, may provide users with an opportunity to block potentially objectionable programs or channels using a parental control code (e.g., a personal identification number (PIN) code)." See Ellis, paragraph [0120]. Placing a parental code on a media object, as taught by Ellis, still allows that media object to be received (i.e., a program can still be viewed if the parental code is entered).

In contrast, a leave command, as claimed, prevents the remainder of a program from being received. According to MPEP § 2143.01(VI), "[i]f the proposed modification or combination of the prior art would change the principle operation of the prior art

invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious." (emphasis added) See MPEP § 2143.01(VI) (citing *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)). Further, MPEP § 2143.01(VI) explains that the court in *Ratti* held the "suggested combination of references would require a substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate." See MPEP § 2143.01(VI) (citing *In re Ratti*, 270 F.2d 813, 123 USPQ 352 (CCPA 1959)). Here, by modifying Ellis using the relied upon teachings of Bosloy, as proposed by the Examiner, the basic principle of a parental code in Ellis would have to be changed and Ellis would have to be substantially reconstructed and redesigned to provide a leave command (as claimed) rather than a parental code. Accordingly, Appellants submit that the proposed modification to Ellis would in no way be desirable to one of ordinary skill in the art, as required by 35 U.S.C. §103(a).

Therefore, for at least the foregoing reasons, Appellants submit that the teachings of Ellis and Bosloy are not sufficient to render independent claim 1 *prima facie* obvious under 35 U.S.C. §103(a).

Claims 2, 5 and 9-11

Claims 2, 5, and 9-11 depend from independent claim 1 and are allowable for at least the same reasons discussed above with respect to independent claim 1.

Claim 12

Independent claim 12 includes subject matter similar to independent claim 1, and is allowable for at least the same reasons discussed above with respect to independent claim 1.

Claims 13 and 19

Claims 13 and 19 depend from independent claim 12 and are allowable for at least the same reasons discussed above with respect to independent claim 12.

Accordingly, for at least the foregoing reasons, Appellants respectfully request that the Board reverse the rejection of claims 1-2, 5, 9-13 and 19.

B. Patentability of Claims 6-7 and 16-17

The rejection of claims 6-7 and 16-17 under 35 U.S.C. §103(a) based on the proposed combination of Ellis, Bosloy and Ellis '926 should be reversed for at least the at least the following reasons.

Claims 6 and 7

Claims 6 and 7 depend from independent claim 1 and are allowable for at least the same reasons discussed above with respect to independent claim 1.

Claims 16 and 17

Claims 16 and 17 depend from independent claim 12 and are allowable for at least the same reasons discussed above with respect to independent claim 12.

Accordingly, Appellants respectfully request that the Board reverse the rejection of claims 6-7 and 16-17.

C. Patentability of Claims 8 and 18

The rejection of claims 8 and 18 under 35 U.S.C. §103(a) based on the proposed combination of Ellis, Bosloy and Olsen should be reversed for at least the at least the following reasons.

Claim 8

Claim 8 depends from independent claim 1 and is allowable for at least the same reasons discussed above with respect to independent claim 1.

Claim 18

Claim 18 depends from independent claim 12 and is allowable for at least the same reasons discussed above with respect to independent claim 12.

Accordingly, Appellants respectfully request that the Board reverse the rejection of claims 8 and 18.

Respectfully submitted,

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September 20, 2010

VIII. Claims Appendix

1. A method for issuing a parental monitoring query command for determining a media object being rendered on a remote device, comprising the steps of:

transmitting, from a monitoring device, a query requesting identification information for a media object being multicasted through a multicast group to a remote device from a host device;

receiving multicast information in response to said query, wherein said multicast information indicates a multicast address and port which is used to multicast said media object through the multicast group to the remote device from the host device;

joining the multicast group with said received multicast information to receive said media object;

resolving said multicast address and port information to identify attributes of said media object; and

providing, from the monitoring device, a leave command to the host device to remove said remote device from said multicast group if said media object is objectionable so that receipt of said media object by said remote device is disabled in real-time.

2. The method of Claim 1, wherein said media object is rendered on said monitoring device.

5. The method of Claim 1, wherein said monitoring device is an Internet Protocol enabled set top box.

6. The method of Claim 1, wherein said monitoring device uses a channel list that maps said multicast address and port to a channel.

7. The method of Claim 6, wherein a program guide is used to select media objects transmitted via a multicast media object corresponding to said channel.

8. The method of Claim 1, wherein said media object is transmitted as part of an Internet Group Management compatible protocol multicasting service and program

identification information is available for said media object as part of a Session Description compatible protocol.

9. The method of Claim 8, wherein said resolving step uses IGMP data obtained from a middleware server.

10. The method of Claim 1, where said query additionally comprises:
a request for a browser history log file, wherein said log file comprises the IP addresses of media objects accessed by said remote device.

11. The method of Claim 10, wherein said remote device is a personal computer.

12. An apparatus for issuing a parental monitoring query command for determining a media object being rendered on a remote device, comprising:

a network interface that issues a query requesting identification information for a media object being multicasted through a multicast group to a remote device from a host device, joins the multicast group with multicast information received in response to said query to receive said media object, and provides a leave command to the host device to remove the remote device from the multicast group if said media object is objectionable so that receipt of said media object by said remote device is disabled in real-time;

a transport decoder that processes said multicast information in response to said query, wherein said multicast information indicates a multicast address and port which is used to multicast said media object through said multicast group to said remote device from said host device; and

a data transport decoder that resolves said multicast address and port information to identify attributes of said media object.

13. The apparatus of Claim 12, wherein said media object is rendered on said apparatus.

16. The apparatus of Claim 13, wherein said apparatus uses a channel list that maps said multicast address and port to a channel.
17. The apparatus of Claim 16, wherein a program guide is used to select media objects transmitted via a multicast media object corresponding to said channel.
18. The apparatus of Claim 12, wherein said media object is transmitted as part of an Internet Group Management compatible protocol multicasting service and program identification information is available for said media object as part of a Session Description compatible protocol.
19. The apparatus of Claim 12, where said query additionally comprises:
a request for a browser history log file, wherein said log file comprises the IP addresses of media objects accessed by said remote device.

IX. Evidence Appendix

None.

X. Related Proceedings Appendix

None.